85-1420

NO.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CURTIS E. DIXON,

Petitioner,

v.

CITY OF WINSTON-SALEM,
NORTH CAROLINA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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PARTIES TO THE PROCEEDING

To avoid the possibility of any misunderstanding, it should be noted that the Respondents to the Petition are limited to the City of Winston-Salem, North Carolina; Orville W. Powell; A. R. Beaty; and T. W. Fredericks (hereinafter collectively referred to as "the City"). The other parties identified by Petitioner (hereinafter "Dixon")[1] (see Pet. 1) were dismissed from this action prior to trial by the Stipulation of Dismissal filed August 6, 1984 (see C.A. App. 9, NR. 90).

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1 Wayne A. Corpening, Larry D. Little, Vivian H. Burke, Virginia K. Newell, Eugene F. Groce, Robert A. Northington, Jr., Ernestine Wilson and John J. Cavanaugh.

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ARGUMENT

"A review on writ of certiorari is not a matter of right, but of judicial

discretion, and will be granted only when there are special and important reasons therefor." Sup.Ct.R. 17. There are no reasons for exercise of the Court's discretionary jurisdiction in the instant case.[2] The law governing this action was properly applied in accordance with the decisions of this Court.

The ultimate burden of persuading the trier of fact that an employer intentionally discriminated against an employee regarding a particular employment decision remains at all times with the employee, and, in the final analysis,

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2 Dixon has not alleged a conflict between the decision in his appeal and a comparable decision of a court of appeals for another circuit. Furthermore, despite Dixon's strained contentions to the contrary, no question of importance is raised in the Petition.

the trier of fact must decide which party's explanation of the employer's motivation it believes. Cooper v. Federal Reserve Bank of Richmond, 104 S.Ct. 2794 (1984); United States Postal Service v. Aikens, 460 U.S. 711 (1983); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978). For the reasons identified by the district court (Pet. App. 6a-28a), Dixon failed to meet his burden of proof.

The Petition, which purports to recite the evidence in this case with respect to Dixon's various claims,[3] simply demonstrates a failure to appreciate the distinction between original and

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3 The most noteworthy example is the "Qualifications Chart" (Pet. App. 29a-32a).

appellate jurisdiction. See Fed.R.Civ.P. 52.

> If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

Anderson v. City of Bessemer City, 105 S.Ct. 1504 (1985). It is apparent that the court of appeals (see Pet. App. 1a-3a) properly applied the governing standard so recently provided by this Court in the Anderson decision.

Dixon's final effort to seduce the Court into an improvident grant of its writ rests upon the bold assertion that

his case should have (somehow) been governed by the decision in Hishon v. King & Spalding, 104 S.Ct. 2229 (1984).[4] The holding in Hishon was that attaining partnership in a law firm could constitute a term, condition or privilege of employment within the meaning of the applicable anti-discrimination statute.[5] Obviously, there is not a "direct conflict"[6] (or even a conflict in principle)

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4 See Pet. 12. A review of the record indicates that Dixon has never before made this assertion in his proposed findings of fact and conclusions of law filed with the district court or in his briefs filed with the court of appeals.

5 The City has never disputed the facts that it is an employer and that Dixon's allegations relate to terms, etc., of employment for the purposes of the governing statutes. The Hishon decision does not address any other relevant legal issues.

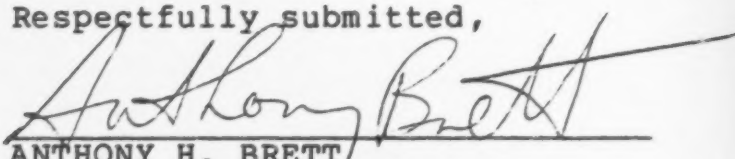
6 Presumably Dixon's reference to "[t]he district court's finding of

between the Hishon holding or its rationale and the decision of the court of appeals in this case.

CONCLUSION

For the foregoing reasons, the Petition for the Court's issuance of its writ of certiorari should be denied.

Respectfully submitted,



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footnote continued

legality" (Pet. 12) as being in conflict with the Hishon decision was intended to be directed to the decision of the court of appeals. If Dixon's reference to the decision of the district court is deemed binding, however, then this Court is without jurisdiction pursuant to 28 U.S.C. § 1254(1) to grant its writ of certiorari in this proceeding. See Pet. 2.